

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

WILLIAM J. YOST, )  
                        )  
Plaintiff,           )                         8:10CV197  
                        )  
v.                    )  
                        )  
I.B.E.W. LOCAL NO. 22, OMAHA           )                         ORDER  
ELECTRIC SERVICE, INC., GARY KELLY    )  
and EDWARD J. CIZEK III,                )  
                        )  
Defendants.           )  
                        )

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This matter is before the court on defendant Gary Kelly's motion to dismiss the amended complaint pursuant to Fed. R. Civ. P. 12(b)(6). Filing No. 26. Also before the court is a motion to dismiss the amended complaint filed by defendants Edward J. Cizek, III, and Omaha Electric Service. Filing No. 21.<sup>1</sup> Following the filing of these two motions, plaintiff William Yost filed a motion to dismiss defendants Omaha Electric Service, Inc.; Gary Kelly, individually; and Edward Cizek, individually, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(I). Filing No. 43. The court has carefully reviewed the matter and finds motion to dismiss all three defendants, Filing No. 43, should be granted.

THEREFORE, IT IS ORDERED:

1. Defendants' motion to dismiss the complaint, Filing No. 16, is denied as moot;
2. Defendants' motion to dismiss, Filing No. 21, is denied as moot;
3. Defendant's motion to dismiss, Filing No. 26, is denied as moot; and
4. Plaintiff's motion to dismiss, Filing No. 43, is granted. Defendants Omaha Electric Service, Inc., Gary Kelly (individually), and Edward J. Cizek (individually) are dismissed from this lawsuit.

DATED this 19<sup>th</sup> day of October, 2010.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

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<sup>1</sup>There is also a pending motion to dismiss, Filing No. 16, that the court will deny as moot.